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To <[coordination@fec.gov](mailto:coordination@fec.gov)>  
cc  
bcc  
Subject Proposed Rulemaking 2005-28

Please see the attached letter containing comments from The American Conservative Union on Notice of Proposed Rulemaking 2005-28 ("NPRM"): Coordinated Public Communications.

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1.13.06 Deutsch Letter.pdf



**By Electronic Mail: [coordination@fec.gov](mailto:coordination@fec.gov)**

January 13, 2006

Mr. Brad C. Deutsch  
Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Comments on Notice of Proposed Rulemaking 2005-28 (“NPRM”): Coordinated Public Communications

Dear Mr. Deutsch:

These comments are submitted by the American Conservative Union (“ACU”), the nation’s oldest and largest grassroots conservative issue advocacy organization.

ACU does not engage in electioneering communications. ACU does, however, engage in ongoing public communications about issues, legislation, policies and proposals pending in Congress. ACU primarily communicates with the public via mail, the internet and other written publications, rather than electronic (radio and television) advertising. With respect to the NPRM, ACU submits the following:

1) The FEC should abandon the 120-day period as the time for inclusion in the definition of ‘coordinated public communications’. It is too broad and has no particular relevance to any other provision of FECA as constructed by Congress.

2) The FEC should adopt a more narrowly tailored time period such as the 30 days before the primary / 60 days before the general election approved by Congress for purposes of electioneering communications. Congress has already stated that the 30/60 day period is appropriate for determination of when a radio/television advertisement is for an ‘electioneering’ purpose. The FEC should simply adopt the same standard that Congress has already enacted.

3) ACU opposes the lifting of all time constraints. It is preposterous and unconstitutionally overbroad to presume an election-related purpose to every communication that ACU makes, whenever it is made, simply by virtue of a reference to a federal officeholder who happens also to be a candidate. Such a rule would impermissibly infringe upon ACU's rights to engage in grassroots legislative lobbying on an ongoing basis if the communication is made after or with reference to consultation with members of Congress, something the ACU has engaged in regularly since its founding more than forty (40) years ago.

4) ACU supports the application of a clearly delineated PASO standard, rather than defining *all* communications that 'reference' a federal candidate or party as being susceptible of an election-related purpose. ACU vociferously objects to being restricted in its ability to reference ideology such as 'liberal' or 'conservative'. There is nothing in the statutes which would authorize the FEC to regulate the use of ideological terms in reference to federal officeholders and candidates and ACU opposes such a proposal. Other criteria which would create a safe harbor are a good idea and ACU would support any criteria which protect the ability of ACU and others to engage in policy, legislative and ideological discussions with the general public and to know, in advance, what types of communications are protected from FEC enforcement actions.

5) ACU opposes Alternative 6 on the basis that it is too subjective. A case-by-case enforcement process gives no notice to citizens and citizens' organizations of what is and is not permissible. Liberal organizations have been formed by certain individuals for the sole purpose of filing FEC complaints against all conservative groups and Republican candidates (specifically, Citizens for Responsibility and Ethics in Washington – CREW). CREW exists for that purpose alone and such groups will subject *every* conservative organization to unending FEC enforcement actions and investigations, costing tens of thousands of dollars if the Commission does not draw bright lines that clearly state what conduct and speech is subject to review and what is not.

6) ACU opposes Alternative 7. Not all public communications are for an election-related purpose, *even* if made in cooperation with a federal officeholder. ACU regularly works closely with conservative members of Congress on issues of mutual concern. It is an appalling notion to allow the FEC to investigate any communications by ACU developed in conjunction with a congressional sponsor and to decide *after the fact* that by simply working with the member, the communication is deemed 'coordinated' and subject to federal campaign contribution limits. Such an approach would silence ACU's ability to communicate on any issue that had the prior involvement of a member of Congress. The First Amendment surely does not allow such a result.

7) ACU supports a narrowing of the content standard to include only communications targeted specifically to citizens in the federal officeholder's state or district, and only within narrowly prescribed time periods and only if the communication promotes, attacks, supports or opposes the federal candidate – with the safe harbor provisions and criteria that exempt certain communications from being deemed to have been coordinated with the officeholder.

8) ACU urges the Commission to tie the 'conduct' standard to the communication *only* if the communication is made during the narrowly defined time period and contains the specific content discussed above. Absent such content, and made outside a narrow window of time

preceding the election, ACU submits that the 'conduct' standard should not be subject to inquiry. In other words, the Commission should take the approach that there are certain facts that are clearly discernible from the face of a communication and, absent those factors, the conduct of the communicating entity should not become a subject of the FEC's investigative review. This would allow the Commission to devote its resources to egregious violations of FECA rather than serving the interests of CREW and other liberal zealots to carry on their mission at taxpayer expense and subject ordinary citizens and citizens groups to expensive enforcement actions for exercising their constitutional rights to petition the government.

In sum, ACU urges the Commission to define coordinated public communications as those made for a discernible election-related purpose within a narrow window of time before a federal election, targeted to specific voters related to the officeholder referenced in the communication under a clearly-defined PASO standard. Otherwise, the Commission will spend years and years and millions of dollars investigating constitutionally protected issue communications that should never be the subject of government scrutiny.

Please contact me at (703) 836-8802 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Keene", with a stylized flourish at the end.

David A. Keene, Chairman  
American Conservative Union